SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

James E. Youngdahl, W. Chandler, Ruth Ralph, Amalgamated Clothing Workers of America, CIO, Norma Cobb, Hazel Kennedy, Pauline Midgett, Lois Morrison, Mildred Tacker, Florence Roberts and Pauline Waldrep ____ Petitioners

V. No. ~~269~~ 11

Rainfair, Inc., _____ Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

BRIEF FOR RESPONDENT IN OPPOSITION

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Attorneys for Respondent.

August 7, 1956.

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IN THE

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No. 269.

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V. No. 269.

Rainfair, Inc. ____ Respondent

Petition for Writ of Certiorari to the Supreme Court of Arkansas.

Brief for the Respondent In Opposition

QUESTIONS PRESENTED

This court will not assume jurisdiction because:

(a) The Supreme Court of Arkansas found from the evidence that the picketing was entangled with violence and other illegal conduct, and the whole pattern of conduct along the picket line disclosed a clear design on the part of the petitioner to intimidate and coerce their former fellow workers by persistent abuse, insults, and conduct calculated to cause breaches of the peace and other unlawful results, and should be enjoined under the police power of the state. Petitioner raises no issue that the findings of the lower courts were without warrant so as to be a palpable invasion of their constitutional guarantees. Milk Wagon Drivers Union,

Etc., V. Meadowmoor Dairies, 312 U. S. 287, 61 S. Ct. 552 (Page 555).

(b) Rule 23. 1. (f) Supreme Court Rules, requires that the federal question of the exclusive jurisdiction of the National Labor Relations Board be raised in the Court of first instance in order that the lower Court may first have the opportunity of deciding said question. This question was not raised in the lower Court, and the petition does not specify the stage in the proceedings in the Court of first instance and in the appellate court, at which, and the manner in which, such federal question sought to be reviewed was raised. See pleadings of petitioners filed in the Chancery Court of Cross County, Arkansas, Appendix No. *I, II & III.* Also, opinion of the Supreme Court of Arkansas, Appendix No. 19, last paragraph, Petitioners' Brief.

(c) The National Labor Relation Board would not have had exclusive jurisdiction of this strike had the jurisdictional question have raised in the Court of first instance, because the methods used by petitioners in conducting the strike were illegal. The Federal Law does not give the National Labor Relations Board power to forbid a strike because the methods used are illegal. International Union, U. A. W., et al, V. Wisconsin Employment Relations Board, et al, 336 U. S. 245, 69 S. Ct. 516. (See Syllabus No. 8.)

STATEMENT

The Supreme Court of Arkansas found from the undisputed evidence that the strike was conducted as follows:

The Plant Manager was followed by strikers every time he left the plant in his car. He was told by one of the pickets that she was going to wipe the sidewalks clean with him and send him back to Wisconsin. He received so many anonymous telephone calls at his home that he had to have his telephone disconnected at night.

Nails and roofing tacks were strewn over the plant's parking area and over the driveways of the home of the Plant Manager and twelve of the women employees.

Mrs. Jewell Newby, an employee of respondent, who lived in a trailer next to the lot leased by petitioners, observed two women strikers, who had previously threatened to move her trailer and whip her, puncture two tires of an automobile belonging to her daughter and who was visiting her at the time. These strikers were arrested and subsequently paid a substantial fine.

A window in respondent's plant was broken and a black snake about five feet long was found inside under the broken window. Both the tire puncturing and the broken window occurred early in the morning of June 20, 1955, the day the picketing was resumed, and thereafter two employees were told by a striker that "you

gals better check your sheets tonight, there might be a snake in them."

The vacant lot leased by Petitioners was separated from Respondent's plant by a street 20 feet wide. From 8 to 37 Union staff members, strikers and sympathizers would gather in and around a tent placed thereon at different times during the day. As the employees would go to and from work at the plant, or go to lunch, or take a recess, the strikers would congregate along the edge of their lot and sometimes in the street, and engage in loud and offensive name yelling, singing or shouting directed at the workers. The workers were called, in addition to these names set forth in petitioners' statement, "dirty scabs," "crazy scabs," "cotton patch scabs," "Fuzzy headed scabs," "fools", "cotton picking fools," and other similar names. This took place every time an employee left or entered the plant and was done by the strikers individually, in couples, or by the entire group and in a loud and boisterous manner. It was described as "just bedlam" when more than a dozen joined in the shouting.

Particular remarks were reserved for individual workers. One pregnant worker was greeted with "Get the hot water ready," or "I am coming to make another payment on the baby, call Dr. Beaton," or, "Why you can work another hour until you go to the delivery

room." This worker and another were at a filling station when two strikers drove up and told the attendant not to wait on "these scabs."

The strikers made fun of one worker's clothing and asked if "Pete", the plant manager, still liked her "low-cut dresses and earrings." This employee became so mad at this that she invited the picket to come over and "make it some of her business." This worker had two boys to support and thought she was entitled to work without being molested and insulted.

The strikers also sang Union songs with lyrics improvised to the tune of popular ballads and religious songs. "When the Saints go marching in" became "When the Scabs go marching in", and "Davy Crockett" began, "Born in a cotton patch in Arkansas, the greenest gals we ever saw . . ." These songs were directed at the workers.

The women pickets would stand in the street or sit near the plant and shout ugly names, stick out their tongues, hold their noses, make a variety of indecent gestures while pointing at the workers in the plant. One striker spit at the workers through the plant window. The strikers would deliberately congregate in the street in front of the plant and make it difficult for the employees to have free ingress and egress to the

plant.

Several of the workers testified that this conduct of the strikers made them afraid, angry, sick and nervous, and had an adverse effect on their work. The Chief of Police testified that there was more tension during the second picketing than during the first, and he was fearful that there was going to be trouble. The Union staff members testified that the feelings were running high and one staff member called the police when trouble seemed imminent.

Respondent offers the above in addition to the statement of petitioners, which is almost identical with the findings of the Supreme Court of Arkansas. See opinion of that Court, petitioners' brief appendix, pages XI-XV.

None of the strikers were members of a labor union at any time during the picketing and none of them nor the staff members of the union made any demands upon the management for improved working conditions or pay. The only demand made upon management was that the union be recognized as representative of a majority of the plant's employees in said plant.

ARGUMENT

(a) The State of Arkansas has the right "to set the limits of permissible contest open to industrial com-

batants," and to exercise its historic powers over such traditionally local matters as public safety and order and the use of streets and highways.

The picketing here was conducted in such a manner as to be enjoinable under the traditional police powers of the state. The Chancery Court of Cross County, Arkansas, found in its decree of September 15, 1955, that:

> "2. That the defendants, in picketing the plaintiff's plant, have resorted to violence, coercion and intimidation, and such other unlawful conduct as was calculated to cause a breach of the peace, and that the defendants have unlawfully abused the right to peaceably picket, as granted to them by the laws of this state and the Federal Constitution, ****." Petitioners' Brief, Appendix VI.

The Supreme Court of Arkansas in its opinion affirming the lower court detailed the background of violence and unlawful conduct committed by petitioners, and the pattern of persistent abuse, insults, and other conduct calculated to cause breaches of the peace, and then said:

> "It is difficult to understand how any court could classify such conduct as 'Peaceful picketing'."
> Petitioners' Brief, Appendix XIX.

These findings of the lower court will be accepted by this court unless it is shown by petitioners that those findings were without warrant, so as to be a palpable invasion of constitutional guarantees. See Milk Drivers Union of Chicago V. Meadowmoor Dairies,

supra.

The undisputed evidence shows that the strikers' conduct, during both periods of picketing, was such as to be enjoinable under the police powers of the state.

From Thornhill V. State of Alabama, 310 U. S. at pages 103-104, 60 S. Ct. at page 745, 84 L. Ed. 1093, where it was said that "the court was careful to point out that it was within the province of state to set the limits of permissible contests open to industrial combatant" down to the present time this court has consistently held that the state courts have such power, and in addition thereto have the historic powers over such traditional local matters as public safety and order, and the use of streets and highways, Allen-Bradley Local V. Wisconsin Employment Relations Board, 315 U. S. 740, 62 S. Ct. 820, 86 L. Ed. 1154, or if the picketing is conducted contrary to state law, the state has the power to control same. Giboney V. Empire Storage & Ice Company, 336 U. S. 490, 69 S. Ct. 684; International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers Union V. Hanke, 339 U. S. 470, 70 S. Ct. 773; Hughes V. Superior Court of California, 339 U. S. 460, 70 S. Ct. 718, 94 L. Ed. 985. See also, Milk Wagon Drivers Union, ETC., V. Meadowmoor Dairies, supra, where the court said: —

"But utterance in a context of violence can lose

its significance as an appeal to reason and become part of an instrument of force."

In Garner V. Teamsters, Chauffeurs and Helpers, Etc., 346 U. S. 485, 74 S. Ct. 161, the court again recognized the right of the states to enjoin mass picketing, threatening of employees, obstructing streets and highways, or picketing homes, or enjoining activity which threatens a probable breach of the state's peace, or would call for extraordinary police measures by state or city authorities. (Page 164).

The public policy of the state of Arkansas is defined in the following cases:

Local Union 313 V. Stathakis, 135 Ark. 86,
Riggs V. Tucker Duck & Rubber Co., 196 Ark. 571,
Local Union No. 858 V. Jiannas, 211 Ark. 352.

In the case of Smith V. F & C Engineering Company, opinion delivered December 12, 1955, The Law Reporter, Vol. 100, No. 3, Page 88, the court said that it is well settled by the decision of the U. S. Supreme Court and our own cases that peaceable picketing is allowed under the constitutional guaranty of freedom of speech in order that a Union may acquaint the public with the fact and nature of a labor dispute and solicit public support in any lawful manner to prevail in the controversy, and that it is equally well settled that the law does not

countenance the use of threat, intimidation, force, coercion, violence, or other unlawful means, however laudable the motive or purpose of the strikers.

PETITIONERS' BRIEF

A. The injunction does not violate the constitutional right of peaceful picketing.

Petitioner argues that you must have the degree of violence that was in the Meadowmoor case before a state injunction will be justified. We have previously quoted cases setting out the legal theory upon which injunctions can be issued, and all the cases seem to hold that the courts will not countenance the use of threat, intimidation, force, coercion, violence, obstructing streets and highways, picketing homes or activity which threatens a probable breach of the state's peace, or which would call for extraordinary police protection. Petitioners claim that the acts of violence were isolated and episodic, but the Supreme Court of Arkansas said:

> "Even if it be conceded that the acts of violence involved here fall in that category, there was nothing isolated nor infrequent about the persistent abuse, insults and epithets along the picket line. Many jurisdictions have authorized such injunctions where the strikers' acts and conduct have been so entangled with violence and other illegal conduct that future excesses might reasonably be anticipated in the light of what was previously done. See cases collected in 132 A. L. R. 1218."
>
> Petitioners' Brief, Appendix XIX.

B. The injunction does not violate the constitutional right of freedom of speech.

The Supreme Court of Arkansas disposed of this matter with the following statement:

> "A constitutional right to abuse, insult, slander, or intimidate others is simply non-existent in this country. Freedom of speech does not mean freedom of vituperation nor does it mean freedom of a person to insult, revile or intimidate others."
> Petitioners' Appendix No. XVII.

In support of this statement of law the court cited the following:

> Chaplinsky V. State of New Hampshire, 315 U. S. 568, 62 S. Ct. 766, 86 L. Ed. 1031,
> Cantwell V. Connecticut, 310 U. S. 296, 309, 310, 60 S. Ct. 900, 906, 84 L. Ed. 1213, 128 A. L. R. 1352.

In the Chaplinsky case the court said that resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution and its punishment as a criminal act would raise no question under that instrument.

The Arkansas Supreme Court, (Petitioners' Appendix XVIII,) quoting Arkansas Statutes Sec. 41-1412, had this to say:

> "It has long been a violation of the criminal laws of this state for any person to '. . . make use of any profane, violent, vulgar, abusive or insulting language toward or about any other person in his presence or hearing, which language in its common acceptation is calculated to arouse to anger the person about or to whom it is spoken or addressed, or to cause a breach of the peace or an assault . . .'." Ark. State. Sec. 41-1412

See the following Arkansas cases construing said Statute:

Moore V. State, 50 Ark. 25, Ruffin V. State, 207 Ark. 672, Branton V. State, 214 Ark. 861, Certiorari denied, 70 S. Ct. 155, 338 U. S. 878.

In the case of National Labor Relations Board V. Longview Furniture Company, 206 Fed. (2d) 274, the court said that the National Labor Relations Act does not protect employees who use insulting and profane language calculated and intended to publicly humiliate and degrade employees who are attempting to work, and from the standpoint of discharge or reinstatement of such employees there is no difference in principle between engaging in acts of violence and using profane and insulting language toward fellow employees in an effort to drive them from work.

Petitioners seek to justify the threats, insults, epithets, and coercion thrown at the workers by saying that the strikers were not products of finishing schools but were wives and daughters of Eastern Arkansas sharecroppers, with limited education and social background. There is no evidence in the record to support this statement. The workers came from the same county that the strikers came from, and all of them were people who sought employment at Rainfair, Inc., and were employed because of their qualifications. Petitioners

further state that the workers used the only weapons at their command — jeers and ridicule. These weapons were insults, slander, and violated the criminal laws of Arkansas.

The use of the word "scab" has many times been condemned by the courts of this country. Prince V. Socialistic Cooperative Publ Assn' 64 N. Y. S. 285, U. S. V. Taliaferro, 290 Fed. Rpr. 214, Taliaferro V. U. S. 290 Fed. Repr. 906, State V. Johnson, 18 P (2d) 35, 78 Corpus Juris Sec. page 586.

In the case of Caterpillar Tractor Company V. NLRB, U. S. Court of Appeals, Seventh Circuit, 230 Fed. (2d.) 357, the court said t. t although Union organizational activity is protected by the National Labor Relations Act, that wearing "Don't Be A Scab" buttons is disruptive and goes beyond the area of protective activity.

C. The injunction does not violate the petitioners' freedom of assembly.

There has been no evasion of petitioners' freedom to assemble. The Union rented the lot directly across Rowena Street, which is 20 feet wide, for 30 days, and placed a telephone, tables, chairs, a stove and benches under a tent on said property. The purpose of renting the lot was to use it for mass picketing and insults thrown at the workers. It was here that the strikers

congregated, mass picketed, and insulted the workers. They used this lot as a spring board for their unlawful activities, and they were enjoined from loitering and congregating around and under the tent, because they were threatening, intimidating and coercing the officers, agents and employees of respondent.

D. The National Labor Relations Board did not have sole and exclusive jurisdiction of this dispute.

Petitioners finally contend that the National Labor Relations Board has exclusive jurisdiction in this matter. This point was first raised on appeal in the Supreme Court of Arkansas. No allegation of exclusive National Labor Relations Board's jurisdiction was made in any of the pleadings filed by Petitioners in the lower court. See Appendix No. *I, II & III.* The Supreme Court of Arkansas found that this "question of jurisdiction was not raised below." (Petitioners' Appendix XIX.) Petitioners not having raised this question in the lower Court are denied the right by Supreme Court Rule 23 1 (f) to now raise same.

However, in order to fully meet Petitioners' argument respondent states that this matter is controlled by the recent case of United Automobile, A & A. I. W. V. Wisconsin Emp. Rel. BD., decided June 4, 1956. See Supreme Court Reporter June 15, 1956, Vol. 76, No. 15

page 794, where the court said, the fact that a Union commits a federal unfair labor practice while engaging in violent conduct does not prevent state from taking steps to stop the violence. The court further said that it seems obvious that Sec. 8 (b) (1) was not to be the exclusive method of controlling violence even against employees. The state interest in law and order precludes such interpretation. The states are the natural guardians of the public against violence, for it is the local communities that suffer most from the fear and loss occasioned by coercion and destruction. The court then said they would not interpret an Act of Congress to leave the states' powerless to avert such emergencies without compelling directions to that effect. See also, Amalgamated Clothing Workers of America, et, al, V. The Richman Brothers 348 U. S. 511, 75 S. Ct. Reporter, 452.

The Webber and Garner cases relied upon by petitioners involved wholly peaceful picketing, and the court was careful to point out in the Garner case that the activities therein enjoined did not threaten a probable breach of the state's peace

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

J. L. Shaver,
c/o Shaver & Shaver, Attorneys,
Ben Block Building,
Wynne, Arkansas.
Attorney for Respondent.

APPENDIX

IN THE CHANCERY COURT OF CROSS COUNTY, ARKANSAS

Rainfair, Inc. ——— Plaintiff

Vs. No. 3262-A.

James E. Youngdahl, et al ——— Defendants

MOTION TO VACATE TEMPORARY INJUNCTION

Comes the defendants by their attorneys and moves that the Temporary Injunction granted herein on June 25, 1955, be vacated on the authority of Local No. 802 V. Asimos, 216 Ark. 694, 227 S. W. (2d) 154, for the following reasons:

(1) The Injunction as previously written violates the right of free speech, as guaranteed by the 14th Amendment to the Constitution of the United States.

(1) No act of violence or breach of the peace has occurred, which has grown out of the picketing.

(3) The defendants herein have not engaged in mass picketing.

(4) The picketing herein was not for an illegal

purpose, but was for the purpose of securing recognition of the Amalgamated Clothing Workers of America, CIO, by the Rainfair, Inc., which is a legal objective under both State and Federal Law.

Respectfully submitted,
McMATH, LEATHERMAN & WOODS,
Attorneys,

By: _____

Filed
6-30-55
J. W. McElroy, Jr.,
Clerk and Ex-Officio Recorder,
Cross County, Ark.
By: Evangeline R. Davis, D. C.

IN THE CHANCERY COURT OF CROSS COUNTY, ARKANSAS

Rainfair, Inc. _____ Plaintiff

Vs. No. 3262-A.

James E. Youngdahl, Et Al _____ Defendants

AMENDMENT TO MOTION TO VACATE TEMPORARY INJUNCTION

Comes the defendants by their attorneys with an Amendment to Motion to Vacate Temporary Injunction by clarifying Section (4) of said Motion to read as follows:

(4) The picketing herein was not for an illegal purpose, but originally was for the purpose of securing recognition of the Amalgamated Clothing Workers of America, CIO, by the Rainfair, Inc., and redress for unfair labor practices; and the picketing, in the second instance, was for the purpose securing redress for continuing unfair labor practices, which are legal objec-

tives under both State and Federal Law.

Respectfully submitted,
McMATH, LEATHERMAN & WOODS,
Attorneys.
By: Henry Woods.

Filed
July 1, 1955
J. W. McElroy, Jr.,
Clerk and Ex-Officio Recorder,
Cross County, Ark.
By: Evangeline R. Davis, D. C.

Filed: July 27, 1955.
J. W. McElroy, Jr.,
Clerk and ExOfficio Recorder
Cross County, Ark.

IN THE CHANCERY COURT OF CROSS COUNTY, ARKANSAS

Rainfair, Inc., Plaintiff

Vs. No. 3262-A.

James E. Youndahl, Et Al, Defendants

ANSWER

Come now the defendants and file their answer herein as follows:

I.

Defendants admit that they are officers, directors, members or applicants for membership in the Amalgamated Clothing Workers of America, CIO.

II.

Defendants further admit that they established a peaceful picket line around plaintiff's place of business at Wynne, Arkansas, from June 20, 1955, until the time that injunction was issued herein.

III.

Defendants deny each and every other material al-

legation contained in plaintiff's complaint and in particular deny:

(a) That the placards and signs carried by defendants were unfair and misleading.

(b) That defendants engaged in mass congregating and loitering or mass picketing.

(c) That defendants were connected, in any way, with the smashing of the window and the placing of a live snake in plaintiff's plant.

(d) That defendants have followed automobiles of plaintiff's employees, gesturing, yelling and shouting offensive names, personal ridicule and epithets at them.

(e) That defendants used epithets, insults, abusive names and abusive language other than calling plaintiff "Scabs", which word, defendants believe is a proper English word found in recognized dictionaries.

(f) That defendants have congregated in front of driveway and in the streets in front of plaintiff's plant so as to make it difficult for plaintiff's employees to have free ingress and egress into said plant.

(g) That they have annoyed plaintiff's officers and employees by telephone calls.

(h) That they have unlawfully assembled at or

near plaintiff's plant.

(i) That they have engaged in any breach of the peace or other disorders.

(j) That the said defendants were engaged in a strike for an unlawful or illegal purpose.

(k) All other matters set forth in said complaint unless specifically admitted herein.

IV.

Defendants deny that plaintiff has suffered any irreparable injury or damage.

WHEREFORE, defendants pray that the temporary injunction issued herein be dissolved. That costs herein be taxed against plaintiff and that plaintiff take nothing by reason of his complaint herein.

Respectfully submitted,
McMath, Leatherman & Woods, Attorneys,
By: Henry Woods.